

**CURTIS, MALLET-PREVOST,
COLT & MOSLE LLP**

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*Counsel for Wilmington Trust, National
Association, in its Capacity as Trustee*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

MPM SILICONES, LLC, *et al.*,

Debtors,

Chapter 11 - Jointly Administered

Lead Case No. 14-22503 (RDD)

-----X

WILMINGTON TRUST, NATIONAL
ASSOCIATION, IN ITS CAPACITY
AS TRUSTEE,

Plaintiff,

Adv. Proc. No. 14-08248 (RDD)

-against-

WILMINGTON SAVINGS FUND SOCIETY,
FSB, IN ITS CAPACITY AS TRUSTEE, *et al.*,

Defendants.

-----X

NOTICE OF APPEAL

PLEASE TAKE NOTICE THAT plaintiff, Wilmington Trust, National
Association, in its capacity as trustee (the “1.5 Lien Trustee”) for the Momentive Performance
Materials Inc. 10% Senior Secured Notes due 2020 issued by Momentive Performance Materials

Inc. under the Indenture dated as of May 25, 2012, by and through its undersigned counsel, hereby appeals to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 158(a) from the following Orders of this Court, and from each and every part thereof:

1. *Order Granting Defendants' Motion To Dismiss And Motion For Judgment On The Pleadings* [Dkt. No. 51], entered on October 15, 2014 (the "First Order"); and
2. *Order Denying Plaintiff's Motion For Leave To File An Amended Complaint* [Dkt No. 58], entered on January 29, 2015 (the "Second Order").

A copy of the First Order and a copy of the Second Order are annexed as Exhibit A and Exhibit B, respectively.

The names of all parties to the First Order and Second Order, and the names, addresses, and telephone numbers of their respective attorneys are as follows:

<u>Appellants:</u>	<u>Attorneys for Appellants:</u>
Wilmington Trust, National Association, as Trustee	Steven J. Reisman, Theresa A. Foudy, & Gabriel Hertzberg Curtis, Mallet-Prevost, Colt & Mosle LLP 101 Park Avenue New York, NY 10178-0061 Telephone: (212) 696-6000
<u>Appellees:</u>	<u>Attorneys for Appellees:</u>
Wilmington Savings Fund Society, FSB, as Successor Second Lien Indenture trustee	Seth H. Lieberman & Patrick Sibley Pryor Cashman LLP 7 Times Square New York, NY 10036-6569 (212) 455-2000
Apollo Global Management, LLC	Ira S. Dizengoff, Philip C. Dublin, Deborah J. Newman, & Brian T. Carney Akin Gump Strauss Hauer & Feld LLP One Bryant Park New York, NY 10036-6745 (212) 872-1000

Euro VI (BC) S.A.R.L.	Ira S. Dizengoff, Philip C. Dublin, Deborah Newman, & Brian T. Carney Akin Gump Strauss Hauer & Feld LLP One Bryant Park New York, NY 10036-6745 (212) 872-1000
Wellpoint, Inc.	Richard J. Bernard Foley & Lardner LLP 90 Park Ave. New York, NY 10016 (212) 682-7474
Ontario Public Service Employees Union Pension Plan Trust Fund	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
Aristeia Horizons L.P.	Dennis F. Dunne, Michael Hirschfeld, & Samuel A. Khalil Milbank, Tweed, Hadley & McCloy LLP 1 Chase Manhattan Plaza New York, NY 10005-1413 (212) 530-5000
Windermere Ireland Fund PLC	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
Compass TSMA LP	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
Double Black Diamond Offshore Ltd.	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080

Black Diamond Offshore Ltd.	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
GSO Aiguille des Grands Montets Fund I LP	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
GSO Aiguille des Grands Montets Fund II LP	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
GSO Aiguille des Grands Montets Fund III LP	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
GSO Credit-A Partners LP	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
GSO Palmetto Opportunistic Investment Partners LP	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
FS Global Credit Opportunities Fund	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
GSO Coastline Credit Partners LP	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080

GSO Special Situations Fund LP	Dennis F. Dunne, Michael Hirschfeld, & Samuel A. Khalil Milbank, Tweed, Hadley & McCloy LLP 1 Chase Manhattan Plaza New York, NY 10005-1413 (212) 530-5000
GSO Special Situations Overseas Master Fund Ltd.	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
OCM Opps MTIV Holdings, LLC	Dennis F. Dunne, Michael Hirschfeld, & Samuel A. Khalil Milbank, Tweed, Hadley & McCloy LLP 1 Chase Manhattan Plaza New York, NY 10005-1413 (212) 530-5000
LMA SPC for and on behalf of MAP 98 Segregated Portfolio	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
Oceana Master Fund Ltd.	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080 (856) 675-1900
Pentwater Credit Opportunities Master Fund Ltd.	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080 (212) 692-1000
Pentwater Equity Opportunities Master Fund Ltd.	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
Pentwater Event Driven Cayman Fund Limited	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080

Pentwater Event Equity Reflection Fund	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
Pentwater Merger Arbitrage Master Fund Ltd.	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
PWCM Master Fund Ltd.	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
Third Avenue Focused Credit Fund	Dennis F. Dunne, Michael Hirschfeld, & Samuel A. Khalil Milbank, Tweed, Hadley & McCloy LLP 1 Chase Manhattan Plaza New York, NY 10005-1413 (212) 530-5000
Third Avenue High Yield Credit Fund	Dennis F. Dunne, Michael Hirschfeld, & Samuel A. Khalil Milbank, Tweed, Hadley & McCloy LLP 1 Chase Manhattan Plaza New York, NY 10005-1413 (212) 530-5000
Third Avenue Value Income Fund, LP	Dennis F. Dunne, Michael Hirschfeld, & Samuel A. Khalil Milbank, Tweed, Hadley & McCloy LLP 1 Chase Manhattan Plaza New York, NY 10005-1413 (212) 530-5000
Jura Limited	Dennis F. Dunne, Michael Hirschfeld, & Samuel A. Khalil Milbank, Tweed, Hadley & McCloy LLP 1 Chase Manhattan Plaza New York, NY 10005-1413 (212) 530-5000
Manulife Global Focused Balance Fund	Dennis F. Dunne, Michael Hirschfeld, & Samuel A. Khalil Milbank, Tweed, Hadley & McCloy LLP 1 Chase Manhattan Plaza New York, NY 10005-1413 (212) 530-5000

Ares Management LLC	Dennis F. Dunne, Michael Hirschfeld, & Samuel A. Khalil Milbank, Tweed, Hadley & McCloy LLP 1 Chase Manhattan Plaza New York, NY 10005-1413 (212) 530-5000
Ares SSF Riopelle, L.P.	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
Ares Special Situations Fund III, L.P.	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
Transatlantic Reinsurance Company	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
RSUI Indemnity Company	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
ASIP (Holdco) IV S.A.R.L.	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
Ares Senior Loan Trust	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
Ares Multi-Strategy Credit Fund V(H), L.P.	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080

PPF Nominee 1 B.V.	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
Carlson Capital, L.P.	Dennis F. Dunne, Michael Hirschfeld, & Samuel A. Khalil Milbank, Tweed, Hadley & McCloy LLP 1 Chase Manhattan Plaza New York, NY 10005-1413 (212) 530-5000
Oaktree Capital Management, L.P.	Dennis F. Dunne, Michael Hirschfeld, & Samuel A. Khalil Milbank, Tweed, Hadley & McCloy LLP 1 Chase Manhattan Plaza New York, NY 10005-1413 (212) 530-5000
Fortress Credit Advisors LLC	Dennis F. Dunne, Michael Hirschfeld, & Samuel A. Khalil Milbank, Tweed, Hadley & McCloy LLP 1 Chase Manhattan Plaza New York, NY 10005-1413 (212) 530-5000
D.E. Shaw Galvanic Portfolios, L.L.C.	Dennis F. Dunne, Michael Hirschfeld, & Samuel A. Khalil Milbank, Tweed, Hadley & McCloy LLP 1 Chase Manhattan Plaza New York, NY 10005-1413 (212) 530-5000
Steamboat Credit Opportunities Master Fund LP	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080
Compass ESMA LP	Thomas E. Chase & Mark M. Rottenberg Rottenberg Lipman Rich, P.C. 369 Lexington Avenue New York, NY 10017 (212) 661-3080

Dated: New York, New York
March 16, 2015

**CURTIS, MALLET-PREVOST,
COLT & MOSLE LLP**

By: /s/ Steven J. Reisman
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New York, New York 10178-0061
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ghertzberg@curtis.com

*Counsel to Wilmington Trust,
National Association, as Trustee*

Exhibit A

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re:

MPM SILICONES, LLC, et al.,

Debtors.

-----X
WILMINGTON TRUST, NATIONAL ASSOCIATION,
AS TRUSTEE,

Plaintiff,

-against-

JPMORGAN CHASE BANK, N.A., AS
INTERCREDITOR AGENT UNDER THE
INTERCREDITOR AGREEMENT, WILMINGTON
SAVINGS FUND SOCIETY, FSB, AS SUCCESSOR
SECOND LIEN INDENTURE TRUSTEE, APOLLO
GLOBAL MANAGEMENT L.L.C., EURO VI(BC)
S.À.R.L., WELLPOINT, INC., ONTARIO PUBLIC
SERVICE EMPLOYEES UNION PENSION PLAN
TRUST FUND, ARISTEIA HORIZONS, LP,
WINDERMERE IRELAND FUND PLC, COMPASS
TSMA, LP, COMPASS ESMA, LP, DOUBLE BLACK
DIAMOND OFFSHORE LTD., BLACK DIAMOND
OFFSHORE LTD., GSO AIGUILLE DES GRANDS
MONTETS FUND I LP, GSO AIGUILLE DES
GRANDS MONTETS FUND II LP, GSO AIGUILLE
DES GRANDS MONTETS FUND III LP, GSO
CREDIT-A PARTNERS LP, GSO PALMETTO
OPPORTUNISTIC INVESTMENT PARTNERS LP, FS
GLOBAL CREDIT OPPORTUNITIES FUND, GSO
COASTLINE CREDIT PARTNERS LP, GSO
STEAMBOAT CREDIT OPPORTUNITIES MASTER
FUND LP, GSO SPECIAL SITUATIONS FUND LP,
GSO SPECIAL SITUATIONS OVERSEAS MASTER
FUND LTD., OCM OPPS MTIV HOLDINGS, LLC,
LMA SPC FOR AND ON BEHALF OF THE MAP 98
SEGREGATED PORTFOLIO, OCEANA MASTER
FUND LTD., PENTWATER CREDIT
OPPORTUNITIES MASTER FUND LTD.,
PENTWATER EQUITY OPPORTUNITIES MASTER

: Chapter 11

:
: Case No. 14-22503 (RDD)

:
: Jointly Administered

:
: Adversary Proceeding
: No. 14-08248 (RDD)

FUND LTD., PENTWATER EVENT DRIVEN :
CAYMAN FUND LIMITED, PENTWATER EVENT :
EQUITY REFLECTION FUND, PENTWATER :
MERGER ARBITRAGE MASTER FUND LTD, :
PWCM MASTER FUND LTD, THIRD AVENUE :
FOCUSED CREDIT FUND, THIRD AVENUE HIGH :
YIELD CREDIT FUND, THIRD AVENUE VALUE :
INCOME FUND, LP, JURA LIMITED, MANULIFE :
GLOBAL FOCUSED BALANCE FUND, ARES :
MANAGEMENT LLC, ARES SSF RIOPELLE, L.P., :
ARES SPECIAL SITUATIONS FUND III, L.P., :
TRANSATLANTIC REINSURANCE COMPANY, :
RSUI INDEMNITY COMPANY, ASIP (HOLDCO) IV :
S.À.R.L., ARES SENIOR LOAN TRUST, ARES :
MULTI-STRATEGY CREDIT FUND V (H), L.P., PPF :
NOMINEE 1 B.V., CARLSON CAPITAL, L.P., :
OAKTREE CAPITAL MANAGEMENT, L.P., JOHN :
DOES #1-10, FORTRESS CREDIT ADVISORS LLC, :
D.E. SHAW GALVANIC PORTFOLIOS, L.L.C. AND :
JOHN DOES #11-20, :
: :
Defendants. :
----- :
:

ORDER GRANTING DEFENDANTS’ MOTION TO DISMISS AND MOTION FOR JUDGMENT ON THE PLEADINGS

Upon defendants’ *Motion to Dismiss and Motion for Judgment on the Pleadings* [Dkt. No. 19] (the “Motion”) seeking dismissal of the Complaint (the “Complaint”) filed by Wilmington Trust, National Association, in its capacity as Trustee (the “Plaintiff”), dated July 16, 2014; and upon the Plaintiff’s objection thereto, the movants’ reply and all other pleadings filed in connection with the Motion [including Dkt. Nos. 19, 21, and 43]; and upon the record of the hearing held by the Court on the Motion on September 30, 2014; and, after due deliberation and for the reasons stated in the Courts’ Corrected and Modified Bench Ruling on the Motion, dated October 14, 2014, a copy of which is attached as an exhibit hereto, the Court having concluded that the Motion should be granted as set forth herein, it is hereby ORDERED that:

1. The Motion is granted, and the following claims alleging breaches or threatened breaches of the Intercreditor Agreement, dated November 16, 2012 (the “ICA”), as more fully described in ¶¶ 1-2 of the Complaint, are dismissed without prejudice: (i) claimed breach of the ICA arising from payment or potential payment by the Debtors¹ of professional fees incurred by certain of the defendants, alleged in ¶¶ 10, 38, and 43 of the Complaint, (ii) claimed breach of the ICA arising from certain of the defendants’ having allegedly contested Plaintiff’s request for adequate protection, and (iii) claimed breach of the ICA arising from certain of the defendants’ alleged support of the Debtors’ efforts to seek approval of new loan agreements, including debtor-in-possession financing, having priority over the existing liens of the Senior Lien Lenders, alleged in ¶¶ 10 and 36 of the Complaint. Within 30 days of the date of this Order, Plaintiff may file a motion under Fed. R. Bankr. P. 7015 for leave to amend the Complaint as to the foregoing claims, attaching its proposed amended complaint as an exhibit. Counsel for the defendants shall promptly submit a proposed order to the Court, with a copy to counsel for the Plaintiff, dismissing with prejudice any of the foregoing claims that are not asserted in such proposed amended complaint attached to such motion.

2. The Motion is granted, and the claims alleged in the Complaint not enumerated in Paragraph 1 of this Order are dismissed with prejudice as to all defendants (including non-moving defendant JPMorgan Chase Bank, N.A.; collectively, the “Defendants”), including, without limitation, the following claims alleging breaches or threatened breaches of the ICA: (i) claimed breach of the ICA arising from certain of the Defendants’ intervention in the Optional Redemption Litigations, alleged in ¶¶ 10, 34 and 35 of the Complaint, (ii) claimed breach of the ICA arising from certain of the Defendants’ entry into the Restructuring Support Agreement, and otherwise supporting the Joint Chapter 11 Plan of Reorganization for

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Momentive Performance Materials Inc. and Its Affiliated Debtors, dated June 23, 2014 [Dkt. No. 515] (as amended, modified, and/or supplemented from time to time, including the Plan Supplement, the “Plan”), alleged in ¶¶ 34, 38-41 of the Complaint, (iii) claimed breach of the ICA arising from certain of the Defendants’ potential or actual receipt during the pendency of the Chapter 11 Cases of alleged proceeds of Common Collateral in the form of a \$30 million charge or fee, alleged in ¶¶ 10, 44 and 60 of the Complaint, and (iv) claimed breach of the ICA arising from the Defendants’ potential or actual receipt upon consummation of the Plan of the alleged proceeds of Common Collateral in the form of new equity as distributions under the Plan, alleged in ¶¶ 42, 70-71 of the Complaint.

Dated: October 15, 2014
White Plains, New York

/s/ Robert D. Drain
HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re:

MPM SILICONES, LLC, et al.,

Reorganized Debtors.

-----X
WILMINGTON TRUST, NATIONAL ASSOCIATION,
IN ITS CAPACITY AS TRUSTEE,

Plaintiff,

-against-

JPMORGAN CHASE BANK, N.A., AS
INTERCREDITOR AGENT UNDER THE
INTERCREDITOR AGREEMENT, WILMINGTON
SAVINGS FUND SOCIETY, FSB, AS SUCCESSOR
SECOND LIEN INDENTURE TRUSTEE, APOLLO
GLOBAL MANAGEMENT L.L.C., EURO VI(BC)
S.À.R.L., WELLPOINT, INC., ONTARIO PUBLIC
SERVICE EMPLOYEES UNION PENSION PLAN
TRUST FUND, ARISTEIA HORIZONS, LP,
WINDERMERE IRELAND FUND PLC, COMPASS
TSMA, LP, COMPASS ESMA, LP, DOUBLE BLACK
DIAMOND OFFSHORE LTD., BLACK DIAMOND
OFFSHORE LTD., GSO AIGUILLE DES GRANDS
MONTETS FUND I LP, GSO AIGUILLE DES
GRANDS MONTETS FUND II LP, GSO AIGUILLE
DES GRANDS MONTETS FUND III LP, GSO
CREDIT-A PARTNERS LP, GSO PALMETTO
OPPORTUNISTIC INVESTMENT PARTNERS LP, FS
GLOBAL CREDIT OPPORTUNITIES FUND, GSO
COASTLINE CREDIT PARTNERS LP, GSO
STEAMBOAT CREDIT OPPORTUNITIES MASTER
FUND LP, GSO SPECIAL SITUATIONS FUND LP,
GSO SPECIAL SITUATIONS OVERSEAS MASTER
FUND LTD., OCM OPPS MTIV HOLDINGS, LLC,
LMA SPC FOR AND ON BEHALF OF THE MAP 98
SEGREGATED PORTFOLIO, OCEANA MASTER
FUND LTD., PENTWATER CREDIT
OPPORTUNITIES MASTER FUND LTD.,
PENTWATER EQUITY OPPORTUNITIES MASTER

: Chapter 11

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: Case No. 14-22503 (RDD)

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FUND LTD., PENTWATER EVENT DRIVEN :
 CAYMAN FUND LIMITED, PENTWATER EVENT :
 EQUITY REFLECTION FUND, PENTWATER :
 MERGER ARBITRAGE MASTER FUND LTD, :
 PWCM MASTER FUND LTD, THIRD AVENUE :
 FOCUSED CREDIT FUND, THIRD AVENUE HIGH :
 YIELD CREDIT FUND, THIRD AVENUE VALUE :
 INCOME FUND, LP, JURA LIMITED, MANULIFE :
 GLOBAL FOCUSED BALANCE FUND, ARES :
 MANAGEMENT LLC, ARES SSF RIOPELLE, L.P., :
 ARES SPECIAL SITUATIONS FUND III, L.P., :
 TRANSATLANTIC REINSURANCE COMPANY, :
 RSUI INDEMNITY COMPANY, ASIP (HOLDCO) IV :
 S.À.R.L., ARES SENIOR LOAN TRUST, ARES :
 MULTI-STRATEGY CREDIT FUND V (H), L.P., PPF :
 NOMINEE 1 B.V., CARLSON CAPITAL, L.P., :
 OAKTREE CAPITAL MANAGEMENT, L.P., JOHN :
 DOES #1-10, FORTRESS CREDIT ADVISORS LLC, :
 D.E. SHAW GALVANIC PORTFOLIOS, L.L.C. AND :
 JOHN DOES #11-20, :

Defendants. :

----- :

**ORDER DENYING PLAINTIFF’S MOTION FOR LEAVE TO FILE
AN AMENDED COMPLAINT**

On January 16, 2015, the Court heard argument of counsel with respect to (i) the *Motion of Plaintiff Wilmington Trust, National Association, in its Capacity as the Successor 1.5 Lien Trustee under the 1.5 Lien Notes Indenture, for Leave to File an Amended Complaint*, dated November 14, 2014 [Dkt. No. 53] (the “Motion”), seeking leave to file an amended complaint in the above-captioned adversary proceeding, (ii) the *Objection to Plaintiffs’ Motions for Leave to File Amended Complaints* dated January 9, 2015 [Dkt. No. 55] (the “Objection”), and (iii) the *Joinder of Wilmington Trust, National Association, as Indenture Trustee for the 1.5 Lien Notes, to the Reply of the First Lien Trustee in Support of Its Motion for Leave to File an Amended Complaint* dated January 15, 2015 [Dkt. No. 56]. And, for the reasons set forth on the record of

the January 16, 2015 hearing, the Court having found and concluded that the filing of the proposed amended complaint would be futile, IT IS HEREBY ORDERED THAT:

1. The Objection is sustained, and the Motion is denied, subject to the other provisions of this Order.

2. The Plaintiff is allowed, within 30 days of the entry of this Order on the docket of this Court, to seek leave under Fed. R. Bankr. P. 7015 to amend Counts I and II of its proposed amended complaint ("PAC"), attaching to such motion a copy of its proposed amended complaint blacklined against the PAC; provided, however, that any proposed amendment seeking to allege breach of the Intercreditor Agreement dated November 16, 2012 or breach of the implied covenant of good faith and fair dealing, in either case arising from the Debtors' alleged payment of the Defendants' professional fees and expenses under the Interim or Final DIP Orders, would be futile, and leave to amend to assert either or both such claims is denied and such claims are dismissed with prejudice for the reasons stated on the record of the January 16, 2015 hearing.

3. This Order shall be deemed a final order for purposes of Rule 8002 of the Federal Rules of Bankruptcy Procedure in 31 days of the entry of this Order on the docket of this Court if Plaintiff elects not to seek leave to amend within 30 days as permitted by paragraph 2 of this Order.

Dated: January 29, 2015
White Plains, New York

/s/Robert D. Drain
HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE